

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**YOLANDA BURTON**

Claimant

**APPEAL NO: 14A-UI-03398-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GIRL SCOUTS OF GREATER IOWA**

Employer

**OC: 02/23/14**

**Claimant: Respondent (2)**

Section 96.6-2 – Timeliness of Protest

871 IAC 24.35(2) – Protest Delay

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated March 20, 2014, reference 02, that held it failed to file a timely protest regarding claimant's employment separation on June 27, 2013, and benefits are allowed. A telephone hearing was held on April 21, 2014. The claimant did not participate. Sara Schroeder, Finance VP, participated for the employer. Employer Exhibit One was received as evidence.

**ISSUE:**

Whether the employer filed a timely protest.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant filed an unemployment claim effective February 23, 2014. The department mailed a notice of claim to the employer's address of record on March 3, 2014 with a protest due date of March 13. The employer prepared and submitted a protest by fax to UI Appeals on March 11. It was not received due to a department fax machine error.

When the employer learned the protest had not been received it re-faxed it on March 14. It was received on that day.

Claimant failed to respond to the hearing notice. There is no record she called UI Appeals on the C2T control system with a request to participate.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes employer affected a timely protest as the delay was due to department error. There are periodic fax machine problems that most probably caused the employer protest delay. When the employer learned the fax had not been received, it exercised due diligence to re-submit it.

**DECISION:**

The department decision dated March 20, 2014, reference 02, is reversed. The employer filed a timely protest. Benefits are allowed claimant, provided she is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs